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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,234	04/24/2000	Patrick J. O'Donnell	PODON.001A	8230
20995	7590	09/24/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/557,234	O'DONNELL, PATRICK J.
	Examiner	Art Unit
	Andrea M. Valenti	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 19-28 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 19-28 and 33-40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 425,603 to Guo in view of Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claim 36, Guo teaches spraying apparatuses for horticulture application providing a hand held spraying apparatus having a handle, an elongated body portion, and a nozzle portion at a distal end of the body portion, the nozzle portion having a longitudinal axis and being adapted to direct water flow outwardly around the circumference of the nozzle axis, the apparatus configured so that moving the handle correspondingly moves the nozzle portion; inherently providing a source of water under pressure; inherently placing the spraying apparatus into communication with the source of water under pressure (Guo Fig. 1).

Guo is silent on a method for removing insects from and cleaning a plant having leaves. However, "Jet-All" teaches using a spraying apparatus by positioning the nozzle adjacent an underside of a plant leaf so that a portion of the water directed by the nozzle impacts the leaf underside and the longitudinal axis of the nozzle is generally horizontally disposed at a first elevation and advancing and retracting the nozzle generally horizontally so that a flow of water imparts the leaf underside along its length

("Jet-All" brochure). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the apparatus taught by Guo in a method of insect removal taught by "Jet-All" since the modification is merely the application of alternate equivalent spraying apparatuses selected for different cost and ergonomic advantages. The spraying apparatus contains all of the structural limitations of applicant's claim language and therefore has the capability of performing the method steps presented by "Jet-All". The intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Guo as modified inherently teaches rotating the apparatus at least about 90 degrees so that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation and advancing and retracting the nozzle generally horizontally at the second elevation to efficiently and effectively treat all size plants.

Regarding Claim 37, Guo as modified by "Jet-All" inherently teaches the step of holding the elongated body at a generally horizontal attitude and advancing and retracting the nozzle through the application of the apparatus to a variety of different size plants.

Regarding Claim 38, Guo as modified by "Jet-All" teaches that elongated body is at least 18 inches long (See "Jet-All" flier).

Claims 19-28, 33-35, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,737,105 to Arnold in view of U.S. Patent Des. 425,603 to Guo and Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claims 19, 20, 25, and 34, Arnold teaches a nozzle spraying apparatus having a longitudinal axis and adapted to direct a generally continuous water flow in a direction outwardly from the axis around the substantially entire circumference of the nozzle axis (Arnold Fig. 1 #45 and 46). Arnold is silent on the handle. However, Guo teaches spraying apparatuses providing a hand held spraying apparatus having a handle, an elongated body portion, and a nozzle portion at a distal end of the body portion, the nozzle portion having a longitudinal axis and being adapted to direct water flow outwardly around the circumference of the nozzle axis, the apparatus configured so that moving the handle correspondingly moves the nozzle portion; inherently providing a source of water under pressure; inherently placing the spraying apparatus into communication with the source of water under pressure (Guo Fig. 1). It would have been obvious to one of ordinary skill in the art to modify the teachings of Arnold with the teachings of Guo to provide a handle for the ergonomic advantage illustrate by Guo. Since it is old and notoriously well-known to place extensions/handles on nozzles to reach higher elevations or into narrow areas.

Arnold as modified by Guo is silent on a method for removing insects from and cleaning a plant having leaves. However, "Jet-All" teaches using a spraying apparatus by positioning the nozzle adjacent an underside of a plant leaf so that a portion of the water directed by the nozzle impacts the leaf underside and the longitudinal axis of the

nozzle is generally horizontally disposed at a first elevation and advancing and retracting the nozzle generally horizontally so that a flow of water imparts the leaf underside along its length ("Jet-All" brochure). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the apparatus taught by Arnold in a method of insect removal taught by "Jet-All" since the modification is merely the application of a known alternate equivalent spraying apparatuses selected for different cost and ergonomic advantages. In addition, the spraying apparatus contains all of the structural limitations of applicant's claim language and therefore has the capability of performing the method steps presented by "Jet-All".

Arnold as modified by "Jet-All" inherently teaches rotating the apparatus at least about 90 degrees so that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation and advancing and retracting the nozzle generally horizontally at the second elevation to efficiently and effectively treat all size plants.

Regarding Claim 21, Arnold as modified teaches the nozzle being adapted to direct flow of water in a substantially vertical plane. (Guo Fig. 1).

Regarding Claim 22, Arnold as modified by "Jet-All" teaches that at least one of the substantially vertical planes is substantially perpendicular to the nozzle portion and inherently comprising the step of holding the elongated body in a substantially horizontal attitude. ("Jet-All"). It would have been obvious to one of ordinary skill in the art to modify the teachings of Guo with the spray direction of "Jet-All" for an increase in coverage area.

Regarding Claim 23 and 33, Arnold as modified by "Jet-All" teaches that the handle includes a bend point and inherently teaches the step of adjusting the elevation of the body portion by rotating the handle about a proximal end of the handle. (Guo Fig. 1).

Regarding Claim 24, Arnold as modified by "Jet-All" inherently discloses advancing and retracting the apparatus into and out of the plant at a plurality of locations, so that water directed by the nozzle simultaneously impacts the top side of a first plant leaf along at least a portion of its length and the underside of a second plant leaf along at least a portion of its length.

Regarding Claim 35, Arnold as modified teaches the broadly presented claim language that the elongated body and the nozzle portion being **substantially** straight and having **substantially** the same longitudinal axis. (Guo Fig. 1).

Regarding Claim 39, Arnold as modified teaches the handle is bent about 30-60 degrees at the bend point (Guo Fig. 1).

Regarding Claim 40, Arnold as modified by "Jet-All" inherently teaches rotating the apparatus about 90 degrees while keeping the longitudinal axis of the nozzle generally horizontally disposed during rotation and advancing and retracting the generally horizontally into and out of the plant a plurality of times while rotating the apparatus.

Regarding Claim 26, Arnold as modified discloses that the nozzle is adapted to create two or more substantially planar and contiguous walls of water around the

circumference of the nozzle, the walls of water being spaced apart from each other (Arnold #45 and 46).

Regarding Claims 27 and 28, Arnold as modified by "Jet-All" inherently discloses advancing and retracting the nozzle between leaves of the plant at a plurality of locations, so that the portions of the wall of water simultaneously impact undersides of leaves generally above the nozzle, top sides of leaves generally below the nozzle, and any matter that may be between the leaves of the plant.

Response to Arguments

Applicant's arguments filed 15 July 2004 have been fully considered but they are not persuasive.

Examiner maintains that the claim rejection is in fact based on an accurate application of the law. Examiner has cited that Guo teaches that it is old and notoriously well-known to place a nozzle at the end of a wand. The "Jet-All" reference teaches an old and notoriously well-known method of applying water via a wand with a nozzle at the end to remove insects from the plant. Examiner merely presented the argument that since Guo, and Arnold in view of Guo, contain all of applicant's structural features that these devices are in turn capable of performing the method steps outlined by application as a further illustration of the already obvious nature of the combination of references. Furthermore, "Jet-All" already teaches the new use for a known device (i.e. water wand). That the cited prior art is capable of performing the method steps of "Jet-All". Examiner maintains that it would have been obvious to one of ordinary skill in the art to modify the teachings with the method presented by "Jet-All" since placing various

configured nozzles at the end of a wand is notoriously well-known for the ergonomic advantages for the ability to reach difficult areas that are narrow, tall, etc. "Jet-All" teaches spraying water on plants to remove insects and for one to effectively treat all infested areas of the plant the user would inherently rotate and move the wand in and out. Examiner maintains that it would be an inherent/obvious movement to perform the steps of advancing, retracting, and rotating the device to reach all locations of a plant depending on the plant size and configuration. By rotating the wand in different orientations inherently increases the coverage area because the spray is reaching parts that it wouldn't have reached if it remained in merely one orientation. It is human nature to orient a device in a desired manner to fit the space constraints of the situation. Orientation is relative to the location of the application area. If the tree/bush is tall the user would orient the device to a higher elevation. If the tree/bush was very wide the user would orient the device and extend it horizontally to reach the center of the tree/bush. The method steps of the instant claims are readily apparent during the operation of the device of Arnold and Guo to the application area taught by "Jet-All".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

20 September 2004


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

9/21/04